

# Memorandum

Subject	Date
Board Precedents and Related Court Decisions	November 29, 2002

To Board Members and All Legal Staff

From Molly Kendall Clark

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Court Decisions Relating to Board Precedents		
Board Cite	Board Holding	Court Response
<b>J-</b> , 2 I&N Dec. 285 (1945)	for deportability based on admitting acts which constitute the essential elements of a crime, conduct must be a crime, alien must be advised in clear manner of the essential elements, alien must admit the conduct, and admission must be voluntary	<i>Pazcoguin v. Radcliffe</i> , 292 F.3d 1209 (9 <sup>th</sup> Cir. 2002) - <b>cited</b>
<b>B-</b> , 5 I&N Dec. 698 (1954)	Proxy marriage not recognized even where parties have lived together if marriage not consummated after the proxy marriage	<i>Moussa v. INS</i> , 302 F.3d 823(8 <sup>th</sup> Cir. 2002) - <b>cited with app</b>
<b>K-</b> , 7 I&N Dec. 594 (1957)	for deportability based on admitting acts which constitute the essential elements of a crime, alien must have been furnished an understandable definition of the crime and all its elements	<i>Pazcoguin v. Radcliffe</i> , 292 F.3d 1209 (9 <sup>th</sup> Cir. 2002) - <b>cited</b>
<b>MacCaud</b> , 14 I&N Dec. 429 (1973)	Passport is evidence of citizenship, but not conclusive evidence	<i>Palavra v. INS</i> , 287 F.3d 690 (8 <sup>th</sup> Cir. 2002) - <b>cites with app</b>
<b>Medina</b> , 15 I&N Dec. 611 (1976)	Conviction for aggravated assault with deadly weapon is CIMT	<i>Yousefi v. INS</i> , 260 F.3d 318 (4 <sup>th</sup> Cir. 2001) - <b>agrees with</b> , and with dangerous weapon a CIMT
<b>Patel</b> , 16 I&N Dec. 600 (1978)	Board remand is effective for stated purpose and all other matters IJ deems appropriate unless Board qualifies or limits the remand	<i>Johnson v. Ashcroft</i> , 286 F.3d 696 (3d Cir. 2002) - <b>agrees wi</b> to require that for remand to be limited, Board must specifica jurisdiction and limit remand to specific purpose

<b>Da Lomba</b> , 16 I&N Dec. 616 (1978)	241(f) can forgive deportability under section 241(c), a charge grounded squarely on 212(a)(19) fraud charge	<i>Virk v. INS</i> , 295 F.3d 1055 (9 <sup>th</sup> Cir. 2002) - <b>cites with approval</b>
<b>Kaneda</b> , 16 I&N Dec. 677 (1979)	state court motive of defeating deportability is a permissible purpose for first offender statute	<i>Sandoval v. INS</i> , 240 F.3d 577 (7 <sup>th</sup> Cir. 2001) - <b>cites with approval</b>
<b>Flores</b> , 17 I&N Dec. 225 (1980)	forging immigration documents is a crime involving moral turpitude	<i>Omagah v. Ashcroft</i> , 288 F.3d 254 (5 <sup>th</sup> Cir. 2002) - <b>finds decision reasonable</b>
<b>Garcia-Flores</b> , 17 I&N Dec. 325 (1980)	regulatory violation by INS results in exclusion of evidence only where reg. benefits alien and violation resulted in prejudice to alien	<i>Martinez-Camargo v. INS</i> , 282 F.3d 487 (7 <sup>th</sup> Cir. 2002)- <b>upholds</b>
<b>Ramirez-Sanchez</b> , 17 I&N Dec. 503 (1980)	When name on INS records is same as respondent's , may infer they relate to him, absent a denial by the respondent	<i>Guerrero-Perez v. INS</i> , 242 F.3d 727 (7 <sup>th</sup> Cir. 2001) - <b>cites generally with approval</b>
<b>Frentescu</b> , 18 I&N Dec. 244 (1982)	sets forth criteria for determining whether crime is "particularly serious"	<i>Yousefi v. INS</i> , 260 F.3d 318 (4 <sup>th</sup> Cir. 2001) - <b>upholds the criteria</b> , but finds not applied in this case
<b>Fedorenko</b> , 19 I&N Dec. 57 (1984)	Board's function is to review, not create, the record, and it is not required to receive new evidence on appeal	<i>Ramirez-Alejandre v. Ashcroft</i> , 276 F.3d 517 (9 <sup>th</sup> Cir. 2002) - <b>cites with approval</b>
<b>Acosta</b> , 19 I&N Dec. 211 (1985)	Asylum applicant must show country-wide persecution	<i>Manzo v. INS</i> , 254 F.3d 342 (1 <sup>st</sup> Cir. 2001) - <b>cautions</b> that burden is on INS, not alien, to show no nation-wide threat, if past persecution has been shown
<b>Valencia</b> , 19 I&N Dec. 354 (1986)	Summary dismissal ok where no brief and only generalized statement on Notice of Appeal	<i>Vargas-Garcia v. INS</i> , 287 F.3d 882 (9 <sup>th</sup> Cir. 2002) - does not reject, but <b>criticizes</b> the rigid requirements, saying the appeal form does not adequately warn of possible S/D

<b>Torres</b> , 19 I&N Dec. 371 (1986)	aliens in exclusion are not eligible for suspension	<i>Sherifi v. INS</i> , 260 F.3d 737 (7 <sup>th</sup> Cir. 2001) - <b>upholds</b>
<b>Balibundi</b> , 19 I&N Dec. 606 (1988)	will not consider application for relief on the merits where alien fails to appear	<i>Kaur v. INS</i> , 237 F.3d 1098 (9 <sup>th</sup> Cir. 2001) - <b>distinguished</b> - here, alien appeared but declined to testify without chance to review evidence
<b>Lozada</b> , 19 I&N Dec. 637 (1988), <b>affirmed</b> (see cite)	imposes several requirements for making a claim of ineffective assistance of counsel	<ol style="list-style-type: none"> <li>1. <i>Lozada v. INS</i>,* 857 F.2d 10 (1<sup>st</sup> Cir. 1988) - <b>affirmed</b></li> <li>2. <i>Castillo-Perez v. INS</i>, 212 F.3d 518 (9<sup>th</sup> Cir. 2000) - <b>Lozada reqs. “not sacrosanct”</b> - substantial compliance may be sufficient</li> <li>3. <i>Lara v. Trominski</i>, 216 F.3d 487 (5<sup>th</sup> Cir. 2000) - <b>upholds</b> requirements</li> <li>4. <i>Hernandez v. Reno</i>, 238 F.3d 50 (1<sup>st</sup> Cir. 2001) - <b>upholds</b> requirements</li> <li>5. <i>Saakian v. INS</i>, 252 F.3d 21 (1<sup>st</sup> Cir. 2001) - agrees with 9<sup>th</sup> Cir. that <b>reqs. may not be “arbitrarily” applied</b></li> <li>6. <i>Stroe v. INS</i>, 256 F.3d 498 (7<sup>th</sup> Cir. 2001) - <b>upholds</b>, and rejects any exceptions to <i>Lozada</i> rules - also questions whether there is constitutional right to counsel in deportation proceedings</li> <li>7. <i>Lu v. Ashcroft</i>, 259 F.3d 127 (3d Cir. 2001) - <b>upholds requirements, BUT</b> failure to file bar complaint not fatal if reas. explanation</li> <li>8. <i>Rodriguez-Lariz v. INS</i>, 282 F.3d 1218 (9<sup>th</sup> Cir. 2002) - <b>Lozada reqs. need not always be “rigidly applied.”</b></li> <li>9. <i>Riley v. INS</i>, ___ F.3d ___ (can’t find WL cite) -</li> </ol>
<b>Grijalva</b> , 19 I&N Dec. 713 (BIA 1988)	Hearsay is admissible in deportation proceedings unless fundamentally unfair	<i>Velasquez-Valencia v. INS</i> , 244 F.3d 48 (1 <sup>st</sup> Cir. 2001) - <b>cited with approval</b>
<b>Chen</b> , 20 I&N Dec. 16 (1989)	Alien who has suffered past persecution may be granted asylum for humanitarian reasons even without well-founded fear of future persecution	<i>Lal v. INS</i> , 255 F.3d 998 (9 <sup>th</sup> Cir. 2001) - <b>upholds</b> reasoning, but finds Board did not properly apply decision in this case - finds <i>Chen</i> does not require ongoing disability
<b>Anselmo</b> , 20 I&N Dec. 25 (1989)	Board must follow circuit court precedent in cases arising in the circuit	<i>Abdulai v. INS</i> , 239 F.3d 542 (3d Cir. 2001) - <b>generally cited</b>

<b>Soleimani</b> , 20 I&N Dec. 99 (1989)	A. alien not firmly resettled if presence in the U.S. is a consequence of his flight in search of refuge B. Foreign law is a matter to be proven by the party seeking to rely upon it	A. <i>Ali v. Reno</i> , 237 F.3d 591(6 <sup>th</sup> Cir. 2001) - <b>generally cited, with approval</b> B. <i>Abdille v. Ashcroft</i> , 242 F.3d 477 (3d Cir. 2001) - <b>followed</b> (on issue of burden of proof in proving foreign law)
<b>Barrett</b> , 20 I&N Dec. 171 (1990)	state drug conviction can constitute “drug trafficking crime” under 18 USC § 924(c)(2) and thus be an ag fel if it would have been punishable under federal law as a felony	<i>Gerbier v. Holmes</i> , 280 F.3d 297 (3d Cir. 2002) - <b>accepts</b> analysis ( <i>see also Davis</i> , 20 I&N Dec. 536, below)
<b>Sanchez</b> , 20 I&N Dec. 223 (1990)	Proceedings begin when charging document is filed with Immigration Judge	<i>Armendariz-Montoya v. Sonchik</i> , 291 F.3d 1116 (9 <sup>th</sup> Cir. 2002) - <b>cites with approval</b>
<b>Cerna</b> , 20 I&N Dec. 399 (1991)	motions to reopen and motions to reconsider are fundamentally different with different requirements	<i>Zhao v. U.S. Dept. of Justice</i> , 265 F.3d 83 (2d Cir. 2001) - <b>cites with approval</b>
<b>D-L- &amp; A-M-</b> , 20 I&N Dec. 409 (1991)	Aliens who lived and worked for 6 years in a third country as lawful temporary residents with option to become permanent residents were firmly resettled there.	<i>Abdille v. Ashcroft</i> , 242 F.3d 477 (3d Cir. 2001) - <b>cites with approval</b>
<b>Coelho</b> , 20 I&N Dec. 464 (1992)	A. where motion to remand really in nature of motion to reopen, it must comply with motion to reopen requirements B. MTR should not be granted unless new evidence could not have been discovered earlier by “due diligence”	A. <i>Wang v. Ashcroft</i> , 260 F.3d 448 (5 <sup>th</sup> Cir. 2001) - <b>upholds</b> B. <i>Krougliak v. INS</i> , 289 F.3d 457 (7 <sup>th</sup> Cir. 2002) - <b>cites with approval</b>
<b>Davis</b> , 20 I&N Dec. 536 (1992); <b>modified Yanez</b> , 23 I&N 390 (2002)	state drug conviction can be ag fel if analogous to felony under federal law and it contains a “trafficking element”	<i>Gerbier v. Holmes</i> , 280 F.3d 297 (3d Cir. 2002) - <b>accepts</b> analysis ( <i>see also Barrett</i> , 20 I&N Dec. 171, above)

<b>Serna</b> , 20 I&N Dec. 579 (1992)	possession of altered immigration documents not a CIMT unless there is intent to use them unlawfully	<i>Omagah v. Ashcroft</i> , 288 F.3d 254 (5 <sup>th</sup> Cir. 2002) - <b>finds decision reasonable</b>
<b>Rainford</b> , 20 I&N Dec. 598 (1992)	firearms conviction does not preclude finding of admissibility in conjunction with application for adjustment	<i>Drax v. Reno</i> , 178 F. Supp. 2d 296 (E.D.N.Y. 2001)- <b>Generally cited</b> and applied
<b>R-</b> , 20 I&N Dec. 621 (1992)	Asylum applicant must show country-wide persecution	<i>Manzoor v. INS</i> , 254 F.3d 342 (1 <sup>st</sup> Cir. 2001) - <b>cautions</b> that burden is on INS, not alien, to show no countrywide threat, if past persecution has been shown
<b>Gabryelsky</b> , 20 I&N Dec. 750 (1993)	212(c) may be available in conjunction with adjustment for aliens deportable for drug and weapons offenses	1. <i>U.S. v. Gonzalez-Roque</i> , 165 F.Supp. 2d 577 (S.D.N.Y. 2001) - <b>Generally cited</b> and applied 2. <i>Drax v. Reno</i> , 178 F. Supp. 2d 296 (E.D.N.Y. 2001)- <b>Generally cited</b> and applied
<b>Sosa-Hernandez</b> , 20 I&N Dec. 762 (1993)	241(f) waives not only alien's deportability, but the underlying fraud, and alien is considered lawfully admitted for permanent residence	<i>Virk v. INS</i> , 295 F.3d 1055 (9 <sup>th</sup> Cir. 2002) - <b>cites with approval</b>
<b>Alcantar</b> , 20 I&N Dec. 801 (1994)	Conviction for involuntary manslaughter under Illinois law is "crime of violence" under 8USC §16, and thus an ag fel.	1. <i>Park v. INS</i> , 252 3d 1018 (9 <sup>th</sup> Cir. 2001) - <b>reaches same conclusion</b> , in case involving California involuntary manslaughter statute (mentions <i>Alcantar</i> in fn) 2. <i>Omar v. INS</i> , 298 F.3d 710 (8 <sup>th</sup> Cir. 2002) - <b>cites with approval</b> in finding that criminal vehicular homicide under Minn. law is a crime of violence
<b>Toboso-Alfonso</b> , 20 I&N Dec. 819 (1990)	sexual orientation can form basis for asylum application	<i>Hernaes v. INS</i> , 244 F.3d 752 (9 <sup>th</sup> Cir. 2001) - <b>cited with approval</b>
<b>B-</b> , 21 I&N Dec. 66 (1995) (ID 3251)	asylum granted due to compelling circumstances despite no well-founded fear	<i>Lal v. INS</i> , 255 F.3d 998 (9 <sup>th</sup> Cir. 2001) - <b>cites with approval</b> , but finds Board did not properly apply decision in this case - finds grant of asylum under <i>Chen</i> does not require ongoing disability

<b>L-G-</b> , 21 I&N Dec. 89 (1995) (ID 3254), <b>modified Yanez</b> , 23 I&N 390 (2002)	For immigration purposes, a state drug offense qualifies as a “drug trafficking crime,” under 18 USC 924(c), and thus as an ag fel, only if punishable as a felony under federal drug laws.	1. <i>U.S. v. Hernandez-Avalos</i> , 251 F.3d 505 (5 <sup>th</sup> Cir. 2001) - <b>rejects</b> Board interpretation of § 924(c) as “plainly incorrect.” 2. <i>Gerbier v. Holmes</i> , 280 F.3d 297 (3d Cir. 2002) - <b>accepts</b> analysis ( <i>see also Barrett</i> , 20 I&N Dec. 171, and <i>Davis</i> , 20 I&N Dec. 536, above)
<b>Mendez-Moralez</b> , 21 I&N Dec. 296 (1996)	Discusses factors to consider in adjudicating application for discretionary relief under section 212(h)	<i>Virk v. INS</i> , 295 F.3d 1055 (9 <sup>th</sup> Cir. 2002) - <b>cites with approval</b> in 241(f) case
<b>Pichardo</b> , 21 I&N Dec. 330 (1996) (ID 3275)	Board won’t look behind record of conviction to factual circumstances of crime	<i>Sui v. INS</i> , 250 F.3d 105 (2d Cir. 2001) - <b>cites with approval</b> (in footnote)
<b>H-</b> , 21 I&N Dec. 337 (1996) (ID 3276)	asylum may be granted due to compelling circumstances despite no well-founded fear	<i>Lal v. INS</i> , 255 F.3d 998 (9 <sup>th</sup> Cir. 2001) - <b>cites with approval</b> , but finds Board did not properly apply decision in this case - finds grant of asylum under <i>Chen</i> does not require ongoing disability
<b>Grijalva-Barrera</b> , 21 I&N 472 (1996) (ID 3284)	Ineffective assistance of counsel may be “exceptional circumstance” excusing failure to appear	<i>Saakian v. INS</i> , 252 F.3d 21 (1 <sup>st</sup> Cir. 2001) - <b>cites with approval</b>
<b>S-P-</b> , 21 I&N Dec. 486 (1996) (ID 3287)	Asylum applicant must show reasonable person would fear persecution OAO, but motivation for persecution need not be shown to a certainty.	<i>Velasquez-Valencia v. INS</i> , 244 F.3d 48 (1 <sup>st</sup> Cir. 2001) - <b>cited with approval</b>

<b>Shaar</b> , 21 I&N Dec. 541 (1996) (ID 3290), <b>affirmed</b> (see cite)	filing MTR during V D time not an “exceptional circumstance”	1. <i>Shaar v. INS*</i> , 141 F.3d 953 (9 <sup>th</sup> Cir. 1998)- <b>affirmed</b> 2. <i>Mardones v. McElroy</i> , 197 F.3d 619 (2d Cir. 1999) - <b>cited with approval</b>
<b>Rivera-Claros</b> , 21 I&N Dec. 599 (1996) (ID 3296)	MTR in absentia hearing based on ineffective assistance claim denied where <i>Lozada</i> requirements not satisfied	1. <i>Lara v. Trominski</i> , 216 F.3d 487 (5 <sup>th</sup> Cir. 2000) - <b>cited with approval</b> 2. <i>Saakian v. INS</i> , 252 F.3d 21(1 <sup>st</sup> Cir. 2001) - <b>cites with approval</b> , and distinguishes b/c <i>Lozada</i> satisfied on appeal to Board 3. <i>Lu v. Ashcroft</i> , 259 F.3d 127 (3d Cir. 2001) - <b>cautions</b> that failure to file bar complaint is not always fatal to ineffective assistance claim
<b>S-M-J-</b> , 21 I&N Dec. 722 (1997) (ID 3303)	even where alien is credible, may need corroborating evidence in asylum case where reasonable to expect, or explanation for absence of such evid.	1. <i>Ladha v. INS</i> , 215 F.3d 889 (9 <sup>th</sup> Cir. 2000) corroboration req. <b>“disapproved”</b> if credible testimony 2. <i>Diallo v. INS</i> , 232 F.3d 279 (2d Cir. 2000) - <b>upholds</b> corrob. req. (though remands on facts) 3. <i>Kataria v. INS</i> , 232 F.3d 1107 (9 <sup>th</sup> Cir. 2000) - reiterates its <b>disapproval</b> of <i>S-M-J-</i> 4. <i>Abdulai v. INS</i> , 239 F.3d 542 (3d Cir. 2001) - <b>corrob. req. is not per se invalid</b> (but remands on facts)
<b>C-A-L-</b> , 21 I&N Dec. 754 (1997)(ID 3305)	need to show country-wide fear of persecution	1. <i>Abdille v. Ashcroft</i> , 242 F.3d 477 (3d Cir. 2001) - <b>follows</b> 2. <i>Manzoor v. INS</i> , 254 F.3d 342 (1 <sup>st</sup> Cir. 2001) - <b>cautions</b> that burden is on INS, not alien, to show no country-wide threat, if past persecution has been shown
<b>T-M-B-</b> , 21 I&N Dec. 775 (1997) (ID 3307), <b>reversed</b> (see cite)	A. criminal extortion is not persecution “on account of” political opinion where reasonable to conclude those who did the harm were not motivated by the applicant’s political beliefs B. DOS Opinions owed considerable deference, absent contradictory evidence.	A. <i>Borja v. INS*</i> , 175 F.3d 732 (9 <sup>th</sup> Cir. 1999) - <b>reversed</b> ; finds motivation was in part political B. <i>Manzoor v. INS</i> , 254 F.3d 342 (1 <sup>st</sup> Cir. 2001) - <b>appears to reject</b> - says DOS opinions not binding

<b>Fuentes-Campos</b> , 21 I&N Dec. 905 (1997) (ID 3318)	aliens in exclusion still 212(c) eligible post-AEDPA, even though those in deportation are not	<p>1. <i>U.S. v. Estrada-Torres</i>, 179 F. 3d 776 (9<sup>th</sup> Cir. 1999) - <b>rejects reasoning</b> of <i>Fuentes-Campos</i>; “it makes no sense” to bar 212(c) in dep. proc., but not in excl. - finds the relief eliminated for both (post- AEDPA OSC and conviction)</p> <p>2. <i>De Sousa v. Reno</i>, 190 F.3d 175 (3d Cir. 1999) - “<b>assumes, without deciding,” that decision is correct</b> because both parties agreed</p> <p>3. <i>Turkhan v. Perryman</i>, 188 F.3d 814 (7<sup>th</sup> Cir. 1999) - <b>upholds</b> - no equal protection violation</p> <p>4. <i>Jurado-Gutierrez v. Greene</i>, 190 F.3d 1135 (10<sup>th</sup> Cir. 1999) - <b>upholds</b> - no equal protection violation</p> <p>5. <i>Almon v. Reno</i>, 192 F.3d 28 (1<sup>st</sup> Cir. 1999) - <b>upholds</b> - no equal protection violation</p> <p>6. <i>Domond v. INS</i>, 244 F.3d 81 (2d Cir. 2001) - <b>reaches same conclusion</b> (no equal protection violation), but does not cite Board case.</p> <p>7. <i>Servin-Espinoza v. Ashcroft</i>, ___ F.3d ___ (2002 WL 31455754) - <b>rejects reasoning</b>, pursuant to <i>U.S. v. Estrada-Torres</i>, 179 F. 3d 776 (9<sup>th</sup> Cir. 1999) (see above), and remands for 212(c) in limited category of cases</p>
<b>C-Y-Z-</b> , 21 I&N Dec. 915 (1997) (ID 3319)	alien whose spouse was forced to undergo abortion or sterilization may qualify as refugee	<i>Zhao v. U.S. Dept. of Justice</i> , 265 F.3d 83 (2d Cir. 2001) - <b>accepts</b> , but finds precedent not properly applied here
<b>J-J-</b> , 21 I&N Dec. 976 (1997) (ID 3323)	<p>A. Board will reopen sua sponte despite filing defects in motion only where there is an exceptional situation, not to cure filing defects or circumvent motions restrictions</p> <p>B. Appeal or motion is deemed filed when received by the Board</p>	<p>A. 1. <i>Socop-Gonzalez v. INS</i>, 272 F.3d 1176 (9<sup>th</sup> Cir. 2001) (en banc) - <b>cited generally with approval</b></p> <p><b>Also see on need for exceptional circumstances</b>, <i>Wang v. Ashcroft</i>, 260 F.3d 448 (5<sup>th</sup> Cir. 2001)</p> <p>A. 2. <i>Johnson v. Ashcroft</i>, 286 F.3d 696 (3d Cir. 2002) - <b>cites with approval</b></p> <p>A. 3. <i>Ekimian v. INS</i>, 303 F.3d 1153 (th Cir. 2002 - <b>cites with approval</b></p> <p>B. <i>Smith v. Connor</i>, 250 F.3d 277 (5<sup>th</sup> Cir. 4/25/01) - <b>upholds</b></p>
<b>Dillingham</b> , 21 I&N Dec. 1001 (1997) (ID3325), <b>reversed</b> (see cite)	foreign expungement of foreign drug conviction not effective for immigration purposes, even if alien would have been eligible for first offender treatment here	<b><i>Dillingham v. INS</i>, * 267 F.3d 996 (9<sup>th</sup> Cir. 2001) - reversed</b>

<b>Yewondwosen</b> , 21 I&N Dec. 1025 (1997) (ID 3327)	BIA may grant MTR even if alien fails to submit application for relief in support of the motion where INS actually joins the motion: Board has authority to reopen even where there are technical deficiencies	1. <i>Konstantinova v. INS</i> , 195 F.3d 528 (9 <sup>th</sup> Cir. 1999) - <b>cited with approval</b> (and goes somewhat further) 2. <i>Iavorski v. INS</i> , 232 F.3d 124 (2d Cir. 2000) - <b>generally cited</b> for Board's power to reopen sua sponte
<b>O-D-</b> , 21 I&N Dec. 1079 (1998) (ID 3334)	BIA sets forth two categories of false documents, noting use of such documents to ease travel or entry may not impugn overall credibility	<i>Akinmade v. INS</i> , 196 F.3d 951 (9 <sup>th</sup> Cir. 1999) - <b>agrees</b> with concept of two classifications
<b>Michel</b> , 21 I&N Dec. 1101(1998) (ID 3335)	212(h) now available to ag fels only if they are non-lprs, not lprs	1. <i>United States v. Arrieta</i> , 224 F.3d 1076 (9 <sup>th</sup> Cir. 2000) - <b>cited generally</b> , but appears to accept Board ruling 2. <i>Lara-Ruiz v. INS</i> , 241 F.3d 934 (7 <sup>th</sup> Cir. 2001)- finds <b>no equal protection violation</b> in allowing only non-lprs to get 212(h) relief 3. <i>Moore v. Ashcroft</i> , 251 F.3d 919 (11 <sup>th</sup> Cir. 2001) - does not cite <i>Michel</i> , but finds <b>no equal protection violation</b> 4. <i>Lukowski v. INS</i> , 279 F.3d 644 (8 <sup>th</sup> Cir. 2002) - <b>accepts decision</b> , finds no equal protection violation 5. <i>Jankowski-Burczyk v. INS</i> , 291 F.3d 172 (2d Cir. 2002) - <b>accepts decision</b> , finds no equal protection violation 6. <i>DeLeon-Reynoso v. Ashcroft</i> , 293 F.3d 633 (3d Cir. 2002) - <b>accepts decision</b> , finds no equal protection violation 7. <i>Taniguchi v. Schultz</i> , 303 F.3d 950 (9 <sup>th</sup> Cir. 8/23/02) - does not cite <i>Michel</i> , but finds <b>no equal protection violation</b>
<b>A-E-M-</b> , 21 I&N Dec. 1157 (1998) (ID 3338)	reasonableness of fear of persecution reduced when family remains behind without difficulty	<i>Aguilar-Solis v. INS</i> , 168 F.3d 565 (1 <sup>st</sup> Cir. 1999) - <b>generally cited</b> for rule regarding family left behind
<b>M-D-</b> , 21 I&N Dec. 1180 (1998) (ID 3339), <b>remanded</b> (see cite)	failure to provide corroborating evid where "reasonable to expect it" means failure to meet burden of proof in asylum case	1. <i>Ladha v. INS</i> , 215 F.3d 889 (9 <sup>th</sup> Cir. 2000) - corroboration req. <b>"disapproved"</b> if credible testimony 2. <i>Diallo v. INS*</i> , 232 F.3d 279 (2d Cir. 2000) - <b>upholds</b> corrob. req (though remands on facts)

<b>Magallanes-Garcia</b> , ID 3341 (1998); <b>overruled Ramos</b> , 23 I&N 336 (2002)	conviction under Az. law for aggravated driving while under the influence is conviction of a “crime of violence,” and thus an ag fel	1. <i>Tapia-Garcia v. INS</i> , 237 F.3d 1216 (10 <sup>th</sup> Cir. 2001) - <b>generally cited, with approval</b> 2. <i>U.S. v. Chapa-Garza</i> , 243 F.3d 92, reh. en banc denied (with dissent), 262 F.3d 479 (5 <sup>th</sup> Cir. 2001) - without citing <i>Magallanes</i> , <b>calls reasoning into question</b> 3. <i>Bazan-Reyes v. INS</i> , 256 F.3d 600 (7 <sup>th</sup> Cir. 2001) - <b>rejects</b> definition of crime of violence 4. <i>Dalton v. Ashcroft</i> , 257 F.3d 200 (2d Cir. 2001) - <b>rejects</b> definition of crime of violence 5. <i>U.S. v Trinidad-Aquino</i> , 259 F.3d 1140 (9th Cir. 2001) - in sentence enhancement case, finds <b>DUI with injury to another not a crime of violence</b> (does not actually cite <i>Magallanes-Garcia</i> ) 6. <i>Francis v. Reno</i> , 269 F.3d 162 (3d Cir. 2001) - <b>distinguished</b> , because conviction here (under Pa. law) did <u>not</u> involve DUI
<b>O-Z- &amp; I-Z-</b> , ID 3346 (1998)	Board finds harassment of Jews on account of religion rose to the level of persecution	<i>Abdille v. Ashcroft</i> , 242 F.3d 477 (3d Cir. 2001) - <b>distinguished</b> on facts
<b>J-P-</b> , ID 3348 (1998)	headache not exceptional circumstance excusing failure to appear where no medical or other evidence to support claim	1. <i>Singh v. INS</i> , 213 F.3d 1050 (9 <sup>th</sup> Cir. 2000) - <b>upholds generally</b> (but see <i>B-A-S-</i> case, below) 2. <i>Celis-Castellano v. Ashcroft</i> , 298 F.3d 888 (9th Cir. 2002) - <b>cites generally</b> - finds asthma attack 4 days before hearing did not excuse failure to appear
<b>B-A-S-</b> , ID 3350 (1998)	sore foot not exceptional circumstance where alien did not submit affidavit from doctor or employer, or contact court immediately	1. <i>Singh v. INS*</i> , 213 F.3d 1050 (9 <sup>th</sup> Cir. 2000) - <b>remands</b> this precedent decision, finding Board imposed new requirements without notice 2. <i>Celis-Castellano v. Ashcroft</i> , 298 F.3d 888 (9th Cir. 2002) - <b>cites generally</b> , noting that here, no notice problems as in <i>Singh</i> (above) - asthma attack 4 days before hearing did not excuse failure to appear
<b>X-G-W-</b> , 22 I&N Dec. 71 (1998)( ID 3352), <b>superseded, G-C-L-</b> 23 I&N 359 (2002)	Board reopens despite time and number restrictions where fundamental change in law (China population case)	1. <i>Lucacela v. Reno</i> , 161 F.3d 1055 (7 <sup>th</sup> Cir. 1998) - <b>generally cited</b> for rule that Board can reopen <i>sua sponte</i> to serve interests of justice 2. <i>Ekimian v. INS</i> , 303 F.3d 1153 99 <sup>th</sup> Cir. 2002) - <b>generally cited</b> for rule that Board can reopen <i>sua sponte</i> to serve interests of justice

<b>Punu</b> , ID 3364 (1998)	A. After IIRIRA, the third “finality” prong of <i>Ozkok</i> for determining if conviction exists, no longer exists B. Deferred adjudication of guilt under Texas law where probation is imposed is a conviction for immigration purposes	A. <i>Moosa v. INS</i> , 171 F.3d 994 (5 <sup>th</sup> Cir. 1999) - <b>upholds</b> Board B. <i>Griffiths v. INS</i> , 243 F.3d 45 (1 <sup>st</sup> Cir. 2001) - Board’s holding a <b>“permissible construction” of statute</b> . “Guilty-filed” disposition under Mass. law can be a conviction for immigration purposes - but case remanded on facts.
<b>G-N-C-</b> , ID 3366 (1998)	A. Decision by INS to institute proceedings is not subject to review by Immigration Judge or Board. B. Without discussion, applies IIRIRA’s reinstatement of removal provisions § 241(a)(5) to alien who reentered prior to IIRIRA’s effective date.	A. <i>Cortez-Felipe v. INS</i> , 245 F.3d 1054 (9 <sup>th</sup> Cir. 2001) - <b>cites with approval</b> B. 1. <i>Castro-Cortez, et al. v. Reno</i> , 239 F.3d 1037(9 <sup>th</sup> Cir. 2001) - <b>rejects</b> application of the statute to such aliens B. 2. <i>Velasquez-Gabriel v. Crocetti</i> , 263 F.3d 102 (4 <sup>th</sup> Cir. 2001)- finds <b>241(a)(5) does apply to aliens who reenter prior to statute’s effective date</b> (does not cite <i>G-N-C-</i> ) B. 3. <i>Bejjani v. INS</i> , 2001 WL 1421925 (6 <sup>th</sup> Cir. 11/14/01) - <b>rejects</b> application of statute to such aliens (cites <i>G-N-C-</i> in footnote, noting Board did not address issue)
<b>B-B-</b> , ID 3367 (1998)	No ineffective assistance of counsel where counsel made tactical decision, and no egregious conduct	<i>Saakian v. INS</i> , 252 F.3d 21(1 <sup>st</sup> Cir. 2001) - <b>cites with approval</b> , and distinguishes
<b>N-M-A-</b> , ID 3368 (1998)	asylum may be granted due to compelling circumstances despite no well-founded fear (though no compelling circumstances here)	<i>Lal v. INS</i> , 255 F.3d 998 (9 <sup>th</sup> Cir. 2001) - <b>cites with approval</b> , but finds Board did not properly apply decision in this case - finds grant of asylum under <i>Chen</i> does not require ongoing disability
<b>M-S-</b> , ID 3369 (1998)	requirements for rescission of in absentia order not applicable to MTR that does not seek rescission; also, cannot deny discretionary relief without receiving oral notice of consequences of failure to appear	<i>Lopez v. INS</i> , 184 F.3d 1097 (9 <sup>th</sup> Cir. 1999) - <b>cited with approval</b> in footnote
<b>Lettman</b> , ID 3370 (1998), <b>affirmed</b> (see cite)	alien convicted of ag fel subject to deportation regardless of date of conviction if placed in deportation proceedings on or after 3/1/91, and crime is within ag fel definition	1. <i>Lettman v. INS*</i> , 207 F.3d 1368 (11 <sup>th</sup> Cir. 2000) - <b>affirmed</b> 2. <i>Lewis v. INS</i> , 194 F.3d 539 (4 <sup>th</sup> Cir. 1999) - <b>upholds</b> 3. <i>Bell v. Reno</i> , 218 F.3d 86 (2d Cir. 2000) - <b>rejects Board and 11<sup>th</sup> and 4<sup>th</sup> Circuits’ legal analysis</b> , but agrees with conclusion that alien is deportable as ag fel

<b>S-S-</b> , ID 3374 (1999); <b>strongly criticized Y-L-, A-G-, R-S-R-</b> , 23 I&N 270 (AG2002)	determination whether an alien convicted of an ag fel is barred from withholding due to PSC (where sentenced to less than 5 years) requires individual examination of the offense	<i>Chong v. INS</i> , 264 F.3d 378 (3d Cir. 2001) - <b>cited with approval</b> , and notes actual individual <u>hearing</u> on issue of PSC <u>not</u> required
<b>Ruiz-Romero</b> , ID 3376 (1999), <b>affirmed</b> (see cite)	alien convicted of transporting illegal aliens within the U.S. subject to deportation as ag fel	<i>Ruiz-Romero v. Reno*</i> , 205 F.3d 837 (5 <sup>th</sup> Cir. 2000) - <b>affirmed</b>
<b>Roldan</b> , ID 3377 (1999), <b>reversed in part</b> (see cite)	no effect to be given in immigration proceedings to expungements, etc.	1. <i>Lujan-Armendariz v. INS and Roldan-Santoyo v. INS*</i> , 222 F.3d 728 (9 <sup>th</sup> 2000) - <b>reversed</b> , but only insofar as Board decision relates to Federal First Offenders Act or state counterparts 2. <i>Sandoval v. INS</i> , 240 F.3d 577 (7 <sup>th</sup> Cir. 2001) - <b>distinguishes</b> because sentence modification here, not expungement (and notes <i>Roldan</i> has been “called into question”) 3. <i>Murillo-Espinoza v. INS</i> , 261F.3d 771(9 <sup>th</sup> Cir. 8/14/01) - <b>upholds</b> as “plausible” construction the Board’s holding that state rehabilitative expungements will not be given effect (but see #1 above, for exception) 4. <i>Vasquez-Velezmoro v. INS</i> , 281 F.3d 693 (8 <sup>th</sup> Cir. 2002) - <b>upholds</b> , and specifically declines to adopt reasoning of <i>Lujan-Armendariz</i>
<b>Onyido</b> , ID 3379 (1999)	“Attempt,” as used in section 101(a)(43)(U) of the Act is not limited to crimes formally called “attempts.” Intent to defraud plus “substantial step” to commit fraud may be sufficient for attempt under (U).	<i>Sui v. INS</i> , 250 F.3d 105 (2d Cir. 2001) - <b>accepts legal holding</b> , but finds no substantial step here (i.e. distinguishes on facts)
<b>Cervantes-Gonzales</b> , ID 3380 (1999), <b>affirmed</b> (see cite)	IIRIRA amendment to 212(i), adding hardship requirement, applies to cases pending when IIRIRA was enacted	<i>Cervantes-Gonzales v. INS</i> , * 244 F.3d 1001 (9 <sup>th</sup> Cir. 2000) - <b>affirmed</b>

<b>Nolasco</b> , ID 3385 (1999)	No continuous physical presence for suspension if OSC is served less than 7 years after entry	<p>1. <i>Appiah v. INS</i>, 202 F.3d 704 (4<sup>th</sup> Cir. 2000) - <b>upholds</b> (finds stop-time rule constitutional)</p> <p>2. <i>Gonzalez-Torres</i>, 213 F.3d 899 (5<sup>th</sup> Cir. 2000) - <b>upholds</b> (stop-time rule constitutional)</p> <p>3. <i>Rivera-Jimenez v. INS</i>, 214 F.3d 1213 (10<sup>th</sup> Cir. 2000) - <b>upholds</b> <i>Nolasco</i>, but remands on facts re: brief, casual and innocent departure</p> <p>4. <i>Afolayan v. INS</i>, 219 F.3d 784 (8<sup>th</sup> Cir. 2000) - <b>upholds</b></p> <p>5. <i>Ayoub v. INS</i>, 222 F.3d 214 (5<sup>th</sup> Cir. 2000) - <b>upholds</b> (characterizes <i>Gonzalez-Torres</i>, above, as dicta)</p> <p>6. <i>Angel-Ramos v. INS</i>, 227 F.3d 942 (7<sup>th</sup> Cir. 2000) - <b>upholds</b></p> <p>7. <i>Ashki v. INS</i>, 233 F.3d 913 (6<sup>th</sup> Cir. 2000) - <b>upholds</b></p> <p>8. <i>Rojas-Reyes v. INS</i>, 235 F.3d 115 (2d Cir. 2000) - <b>upholds</b></p> <p>9. <i>Bartoszewska-Zajac v. INS</i>, 237 F.3d 710 (6<sup>th</sup> Cir. 2001) - <b>upholds</b>, and rejects equal protection arguments</p> <p>10. <i>Ram v. INS</i>, 243 F.3d 510 (9<sup>th</sup> Cir. 2001) - <b>upholds</b></p> <p>11. <i>Guadalupe-Cruz v. INS</i>, 240 F.3d 1209 (9th Cir. 2001) - <b>distinguished</b>, because Immigration Judge incorrectly applied stop-time law before its effective date</p> <p>12. <i>Sad v. INS</i>, 246 F.3d 811(6<sup>th</sup> Cir. 2001) - <b>upholds</b>, and also rejects retroactivity and equal protection arguments</p> <p>13. <i>Pinho v. INS</i>, 249 F.3d 183 (3d Cir. 2001) - <b>upholds</b></p> <p>14. <i>See also Tefel v. Reno</i>, 180 F.3d 1286 (11<sup>th</sup> Cir. 1999) - without citing <i>Nolasco</i>, finds stop-time rule constitutional</p>
<b>L-S-</b> , 22 I&N Dec. 645 (ID 3386) (1999)	determination whether an alien convicted of an ag fel is barred from withholding due to PSC (where sentenced to less than 5 years) requires individual examination of the offense	<p>1. <i>Chong v. INS</i>, 264 F.3d 378 (3d Cir. 2001) - <b>cited with approval</b>, and notes actual individual <u>hearing</u> on issue of PSC <u>not</u> required</p> <p>2. <i>Bosede v. Ashcroft</i>, ___ F.3d ___ (2002 WL 31420753) (7<sup>th</sup> Cir. 10/29/02) - <b>cited generally with approval</b></p>
<b>Perez</b> , ID 3389 (1999)	continuous physical presence for cancellation of removal ends on date offense is committed	<i>Henry v. Ashcroft</i> , 175 F.Supp. 2d 688 (S.D.N.Y 2001) - <b>rejects</b> , holding application of new IIRIRA provision to offense committed pre-IIRIRA has improper retroactive effect

<b>Alvarado-Alvino</b> , ID 3391 (1999)	Ag fel under 101(a)(43)(N) includes only convictions under 8 U.S.C. § 1324(a), not § 1325(a)	<i>Rivera-Sanchez v. Reno</i> , 198 F.3d 545 (5 <sup>th</sup> Cir. 1999) - <b>upheld</b>
<b>H-A-</b> , ID 3394 (1999); <b>modified Velarde</b> , 23 I&N 253 (2002)	<i>Arthur</i> , 20 I&N Dec. 475 (1992), requiring approved visa petition prior to reopening for adjustment, survives regulations imposing MTR time limits ( <b>but <i>Arthur</i> modified by <i>Velarde</i></b> , 23 I&N 253 (2002)	<i>Balwinder Singh v. Quarantillo</i> , 92 F.Supp. 2d 386 (D.N.J. 2000) - <b>rejects</b> Board majority and adopts dissent rationale
<b>Ponce-Hernandez</b> , ID 3397 (1999)	Form I-213 is an inherently trustworthy, admissible document	<i>Guerrero-Perez v. INS</i> , 242 F.3d 727 (7 <sup>th</sup> Cir. 2001) - <b>cites generally with approval</b>
<b>R-S-J-</b> , ID 3401 (1999)	false statements to asylum officer can constitute false testimony for purposes of 101(f)(6)	<i>Ramos v. INS</i> , 246 F.3d 1264 (9 <sup>th</sup> Cir. 2001) - <b>cites with approval</b>
<b>L-V-K-</b> , ID 3409 (1999), <b>vacated</b> (see cite)	motion to remand filed while appeal of denial of MTR proceedings that are administratively final is pending is untimely if filed more than 90 days after the final order	1. <b><i>Konstantinova v. INS</i></b> * (9 <sup>th</sup> Cir. 4/3/00) - in unpublished order, without explanation, Board's precedent was <b>vacated</b> . Earlier, published decision, at 195 F.3d 528 (9 <sup>th</sup> Cir. 1999), did not deal with Board's precedent decision 2. <i>Wang v. Ashcroft</i> , 260 F.3d 448 (5 <sup>th</sup> Cir. 2001) - <b>upholds</b> and applies to case 3. <i>Krougliak v. INS</i> , 289 F.3d 457 (7 <sup>th</sup> Cir. 2002) - <b>upholds</b>
<b>Rodriguez-Rodriguez</b> , ID 3411 (1999)	crime of indecency with a child by exposure under section 21.11(a)(2) of Texas law is sexual abuse of a minor and thus an ag fel	1. <i>U.S. v. Zavala-Sustaita</i> , 214 F.3d 601(5 <sup>th</sup> Cir. 2000) - <b>upheld</b> 2. <i>Guerrero-Perez v. INS</i> , 242 F.3d 727(7 <sup>th</sup> Cir. 2001) - <b>upholds</b> (conviction was for "criminal sexual abuse" under Illinois law) 3. <i>Emile v. INS</i> , 244 F.3d 183 (1 <sup>st</sup> Cir. 2001) - <b>cites with approval</b> (conviction was for indecent assault and battery on a child under 14 under Mass. law) 4. <i>Lara-Ruiz v. INS</i> , 241 F.3d 934 (7 <sup>th</sup> Cir. 2001) - <b>cites with approval</b> 5. <i>Bahar v. Ashcroft</i> , 264 F.3d 1309 (11 <sup>th</sup> Cir. 2001) - <b>Cites with approval</b> (conviction in N.C. for crime of taking indecent liberties with a minor)

<b>Puente</b> , ID 3412 (1999); <b>overruled Ramos</b> , 23 I&N 336 (2002)	conviction of driving while intoxicated under Texas law is a crime of violence and thus an ag fel	<p>1. <i>Tapia Garcia v. INS</i>, 237 F.3d 1216 (10<sup>th</sup> Cir. 2001) - <b>upholds</b> Board decision as reasonable</p> <p>2. <i>U.S. v. Chapa-Garza</i>, 243 F.3d 921, reh. en banc denied (with dissent), 262 F.3d 479 (5<sup>th</sup> Cir. 2001) - without citing <i>Puente</i>, <b>rejects holding</b></p> <p>3. <i>Bazan-Reyes v. INS</i>, 256 F.3d 600 (7<sup>th</sup> Cir. 2001) - <b>rejects</b></p> <p>4. <i>Dalton v. Ashcroft</i>, 257 F.3d 200 (2d Cir. 2001) - <b>rejects</b> definition of crime of violence</p> <p>5. <i>U.S. v. Trinidad-Aquino</i>, 259 F.3d 1140 (9<sup>th</sup> Cir. 2001) - in sentence enhancement case, finds <b>DUI with injury to another not a crime of violence</b> (does not actually cite <i>Puente</i>)</p>
<b>K-V-D-</b> , ID 3422 (1999), <b>overruled, Yanez</b> , 23 I&N 390 (2002)	court interpretation of “ag fel” for sentence enhancement purposes does not control interpretation for immigration purposes	<i>U.S. v. Hernandez-Avalos</i> , 251 F.3d 505 (5 <sup>th</sup> Cir. 2001) - <b>rejects holding</b>
<b>Mendoza-Sandino</b> , ID 3426 (2000)	alien may not accrue 7 years continuous physical presence for suspension after service of OSC	<p>1. <i>Afolayan v. INS</i>, 219 F.3d 784 (8<sup>th</sup> Cir. 2000) - <b>upholds</b> as reasonable interpretation (<i>see also Escudero-Corona v. INS</i>, 244 F.3d 608 (8<sup>th</sup> Cir. 2001) - <b>same result</b></p> <p>2. <i>McBride v. INS</i>, 238 F.3d 371(5<sup>th</sup> Cir. 2001) - <b>upholds</b> as reasonable interpretation</p> <p>3. <i>Ram v. INS</i>, 243 F.3d 510 (9<sup>th</sup> Cir. 2001) - <b>upholds</b></p>
<b>Perez</b> , ID 3432 (2000)	burglary of a vehicle not a “burglary offense” within section 101(a)(43)(G) ag fel definition	<p>1. <i>Ye v. INS</i>, 214 F.3d 1128 (9<sup>th</sup> Cir. 2000) - decided 3 days after <i>Perez</i>, <b>reaches same conclusion</b></p> <p>2. <i>Lopez-Elias v. Reno</i>, 209 F.3d 788 (5<sup>th</sup> Cir. 2000) -decided a month before <i>Perez</i>, <b>reaches same conclusion</b></p>
<b>V-Z-S-</b> , ID 3434 (2000)	offense is “theft offense” under section 101(a)(43)(G) if there is intent to deprive owner of property, even if deprivation is less than total or permanent	<i>Hernandez-Mancilla v. INS</i> , 246 F.3d 1002 (7 <sup>th</sup> Cir. 2001) <b>upholds</b> (court dealt with Ill. crime of possession of stolen vehicle)
<b>Rodriguez-Ruiz</b> , ID 3436 (2000)	conviction that is <u>vacated</u> , not expunged, does not constitute conviction for immigration purposes	<i>Sandoval v. INS</i> , 240 F.3d 577 (7 <sup>th</sup> Cir. 2001) - <b>generally cited, with approval</b>

<b>Bahta</b> , ID 3437 (2000)	conviction for attempted possession of stolen property is conviction of receipt of stolen property, and a theft offense and thus an ag fel	1. <i>U.S. v. Vasquez-Flores</i> , 265 F.3d 1122 (10th Cir. 2001) - <b>generally upholds</b> specifically adopts 7 <sup>th</sup> Circuit reasoning in <i>Hernandez-Mancilla</i> (see below) - sentencing enhancement case 2. <i>Hernandez-Mancilla v. INS</i> , 246 F.3d 1002 (7 <sup>th</sup> Cir. 2001) - <b>generally upholds</b> , but reads “theft offense” somewhat more broadly (court dealt with Ill. crime of possession of stolen vehicle)
<b>Vasquez-Muniz</b> , ID 3440 (2000); <b>overruled Vasquez-Muniz</b> , 23 I&N 207 (2002)	Possession of firearm by felon under Calif. law is not an ag fel.	<i>United States v. Castillo-Rivera</i> , 244 F.3d 1020 (9 <sup>th</sup> Cir. 2001) - without citing Board ID, <b>reaches opposite conclusion</b> (case involves same Calif. law) - finds it is an ag fel.
<b>Crammond</b> , 23 I&N Dec. (2001) <b>vacated</b> , 23 I&N Dec. 179(2001)	conviction for sexual abuse of a minor must be for felony offense to be ag fel under 101(a)(43)(A), but <b>decision vacated</b>	<i>Guerrero-Perez v. INS</i> , 256 F.3d 546 (7 <sup>th</sup> Cir. 2001) - <b>rejects</b> (holds it could be misdemeanor offense)
<b>Rodriguez-Tejedor</b> , 23 I&N Dec. 153 (2001)	person who was over 18 on effective date of Child Citizenship Act of 2000 not eligible for automatic citizenship	1. <i>Hughes v. Ashcroft</i> , 255 F.3d 752 (9 <sup>th</sup> Cir. 2001) - without citing, <b>reaches same conclusion</b> 2. <i>Nehme v. INS</i> , 252 F.3d 415 (5 <sup>th</sup> Cir. 2001) - without citing, <b>reaches same conclusion</b>
<b>G-Y-R-</b> , 23 I&N Dec. 181 (2001)	in absentia order inappropriate where alien did not receive, or cannot be charged with receiving, NTA	<i>Dominguez v. INS</i> , 284 F.3d 1258 (11 <sup>th</sup> Cir. 2002) - without citing Board case, <b>calls holding into question</b> - notice to last address formally provided is sufficient
<b>J-E-</b> , 23 I&N Dec. 291 (2002)	substandard prison conditions in Haiti do not constitute torture where no evidence authorities create and maintain such conditions to inflict torture	<i>Saint Fort v. Ashcroft</i> , 223 F.Supp.2d 343 (D. Mass. 2002) - <b>Distinguishes on facts</b> , finding Board did not consider evidence presented
<b>Ramos</b> , 23 I&N Dec. 336 (2002)	DUI a crime of violence under § 16(b) only if committed at least recklessly and involves substantial risk force will be used	<i>Omar v. INS</i> , 298 F.3d 710 (8 <sup>th</sup> Cir. 2002) - <b>distinguishes</b> from conviction under Minn. law for criminal vehicular homicide

